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FISCAL IMPACT STATEMENT

LS 6911 **NOTE PREPARED:** Feb 1, 2012
BILL NUMBER: SB 344 **BILL AMENDED:** Jan 31, 2012

SUBJECT: State Taxation.

FIRST AUTHOR: Sen. Hershman **BILL STATUS:** As Passed Senate
FIRST SPONSOR: Rep. Espich

FUNDS AFFECTED: X GENERAL **IMPACT:** State & Local
X DEDICATED
FEDERAL

Summary of Legislation: (Amended) *Outdoor Signs*: This bill specifies the assessed value for outdoor signs for the 2011 through 2014 assessment dates. It requires the Commission on State Tax and Financing Policy to study the assessment of outdoor signs.

Low-Income Housing Assessments: The bill specifies that the value of federal income tax credits under Section 42 of the Internal Revenue Code awarded after December 31, 2012, must be used for purposes of determining the assessed value of low-income housing tax credit property.

Residential Historic Rehabilitation Grant Program: This bill permits the fiscal body of a city or town, or the county, in the case of an unincorporated area, to authorize the unit's redevelopment commission to establish a residential historic rehabilitation grant program. It permits the fiscal body to annually appropriate money for the grant program from the property tax increment resulting from any additional property taxes collected as a result of using the value of federal income tax credits in determining the assessed value of low-income housing tax credit property.

Township Assistance Levy: The bill separates the township assistance levy from the township's general fund levy, and provides for a levy based on a rate calculation that must be used to determine a township's assistance levy after 2012. It phases in the change through 2014. The bill freezes a township's township assistance rate for levy determinations after 2014. It also permits a township to increase the township assistance levy only if there is a corresponding reduction in the township's general fund levy.

The bill specifies that if the township is located in a county for which a local option income tax levy freeze is first imposed or increased, the township assistance fund levy remains the same. It provides that if the calculated maximum rate for a township for 2013 is greater than or equal to the 2012 rate, the assessed value growth quotient (AVGQ) applies for 2013 and thereafter. The bill provides that for other townships, the AVGQ applies after 2014, after the new rate is fully phased in.

Solar Power Device: This bill provides a 100% property tax assessed value deduction for a solar power device used to generate electricity that is installed after December 31, 2011. It provides that a person leasing real property with a solar power device is eligible for the exemption if the person is subject to assessment for the solar power device.

Sales Tax Refunds: This bill specifies that industrial processors and those engaged in floriculture and arboriculture do not have to file a sales tax refund claim if the utility service is separately metered, or it has been determined that the utility service is predominantly used in industrial processing, horticulture, or arboriculture.

The bill also provides that a sales tax refund claim based on the exemption for electrical energy, natural or artificial gas, water, steam, and steam heat may not cover transactions that occur more than 36 months (rather than 18 months, under current law) before the date of the refund claim.

Sales Tax Exemptions: The bill provides a sales and use tax exemption for transactions involving tangible personal property by a company that is engaged in offering a competitive racing experience in a two-seater Indianapolis 500 style race car during a competitive racing event.

The bill also provides a sales tax exemption for sales of wrapping material and empty containers that are acquired for shipping or delivering certain tangible personal property.

Utility Receipts Tax: The bill exempts from the utility receipts tax any payments of severance damages or other compensation resulting from a change in assigned service area boundaries between electricity suppliers.

Consolidated Returns: The bill repeals the laws allowing for a consolidated sales and withholding tax return.

Electronic Sales Tax Return Filing: This bill requires all sales tax returns and payments, excluding those retail merchants whose state gross retail and use tax liability in the previous calendar year does not exceed $1,000, to be filed and remitted electronically.

Withholding Tax Payments: This bill provides that withholding tax payments may be made annually if the total withholding tax due for the year is less than $1,000. It changes the due dates for annual one-time withholding for a nonresident partner and for a nonresident shareholder in an S corporation to April 15. The bill also changes the reporting date for partnerships that make periodic withholding payments from January 30 to March 15.

Electronic Filing: The bill requires any person filing more than 25 copies of certain tax forms to file reports electronically.

Tax Court: This bill removes the prohibition of taking a case to the Tax Court if the Department of State Revenue takes longer than three years to settle a claim.

Income Tax Credit Extension: The bill extends the income tax credits for venture capital investments, Hoosier business investments, alternative fuel manufacturing, and new employers through December 31, 2016.

Coal Gasification Technology Investment Tax Credit: This bill provides that for purposes of the coal gasification technology investment tax credit, an integrated coal gasification powerplant also includes a facility that is dedicated primarily to production of electricity or gas for sale to or use by the Indiana Finance Authority under statutes authorizing the authority to enter into contracts for the purchase, transportation, and delivery of substitute natural gas.

It specifies that a natural gas utility's transportation customer is not a retail end use customer under the Indiana Finance Authority law regarding substitute natural gas contracts if the customer purchases at least 50,000 dekatherms of natural gas annually from an entity other than the natural gas utility.

The bill adds an exception to the requirement that 100% of the coal used in an integrated coal gasification powerplant or as fuel in a fluidized bed combustion unit must be Indiana coal (by allowing the applicant awarded the coal gasification technology investment tax credit to certify that partial use of feedstock is necessary to result in lower rates for Indiana retail utility customers).

Fiduciary Returns: The bill provides that a decedent's estate and a trust do not have to file an Indiana fiduciary return if the gross income for the year is less than $600.

Income Tax Credit Study: This bill requires the Commission on State and Financing Policy to study all income tax credits during 2012 and 2013.

Instructional Spending Study: The bill urges the Legislative Council to assign to a study committee the topic of more clearly defining what is included in instructional spending by school corporations and what is included in noninstructional spending by school corporations for purposes of the annual performance report provided by school corporations.

Clark County Maximum Levy: This bill adjusts the maximum levy for Clark County.

Abatement Notice: The bill provides for a continuous abatement notice regarding weeds and vegetation.

Other Changes: The bill makes a technical change regarding the details for the amount of an E85 deduction and corrects references to the Internal Revenue Code in the income tax law.

Effective Date: Upon passage; January 1, 2011 (retroactive); March 1, 2011 (retroactive); January 1, 2012 (retroactive); July 1, 2012;. January 1, 2013; July 1, 2013.

Explanation of State Expenditures: *Outdoor Signs*: This bill would require the Commission on State Tax and Financing Policy to study the assessment of outdoor signs during the 2012 interim.

Department of State Revenue (DOR): The bill contains various tax procedure provisions for the DOR.

(1) The bill changes the requirement for estates and trusts to file income tax returns from any estate or trust with gross income from sources in Indiana to estates and trusts with gross income of $600 or more from sources in Indiana.

(2) The bill increases the income tax withholding threshold for an employer to pay withholdings to the DOR on an annual basis instead of a monthly basis. The bill increases the threshold from a monthly average during the prior year of $10 to a monthly average of $1,000. The bill also eliminates the 3-month and 6-month reporting periods for employers with small withholdings.

(3) The bill requires all entities that withhold income taxes to file the withholding report and remit withholding taxes electronically. Currently, only entities that registered to withhold after December 31, 2009, must report and remit electronically.

(4) The bill requires any person filing more than 25 copies of the forms listed below after December 31, 2012, to file the forms electronically:

- Form W-2G (certain gambling winnings);
- Form 1099-R (distributions from pensions, annuities, retirement or profit sharing plans, IRAs, insurance contracts, or like distributions);
-Form WH-18 (miscellaneous withholding tax statements for nonresidents).

(5) The bill eliminates the prohibition for the Tax Court to hear a refund appeal that is filed more than three years after the date the claim for refund was filed with the DOR.

Commission on State Tax and Financing Policy (CSTFP): The bill requires the CSTFP to conduct a study of all income tax credits during the 2012 and 2013 legislative interims. The study is to be conducted with half the credits studied during each year and in the order they were enacted. The bill requires the CSTFP to prepare a report that covers each credit and that includes the following:

(1) A review of the original scope and purpose of the credit and whether the scope or purpose has changed since the credit's enactment.
(2) The economic parameters of the credit, including the credit percentage and credit limits, and whether these parameters have changed since the credit's enactment.
(3) A description of the taxpayers that qualify for the credit and how effective the credit has been in assisting these targeted taxpayers.
(4) The type of activities on which the credit is based and how effective the credit has been in promoting these targeted activities.
(5) The amount of the credits granted over time.
(6) A determination of the dollar amount of credits granted but not taken that can be carried forward.
(7) A summary of audit findings for each credit and whether there has been any misuse of the credit.
(8) Suggested changes in the law with regard to each credit, including whether the credit should be retained or not.
(9) Any other issues related to these income tax credits, as determined by the CSTFP.

The bill requires the CSTFP to issue the report in two parts, in an electronic format, and to the Legislative Council, not later than November 1, 2012, and November 1, 2013, respectively.

(Revised) *Substitute Natural Gas*: P.L. 2-2009 permitted the Indiana Finance Authority to enter into contracts for the purchase and sale of substitute natural gas from coal gasification facilities to regulated energy utilities for delivery to retail end-use customers. Current statute provides that a "retail end-use customer" means a customer who acquires energy at retail for the customer's own consumption from a gas utility that must apply to the IURC under IC8-1-2-42 for approval of gas cost changes. This bill clarifies that the term "retail end-use customer" does not include a natural gas utility's transportation customer that purchases at least 50,000 dekatherms of natural gas annually from an entity other than the natural gas utility.

Explanation of State Revenues: *Sales Tax Exemption for Tangible Personal Property:* This bill provides a sales tax exemption for tangible personal property that is leased, owned or operated by a company that is engaged in offering a competitive racing experience during a competitive racing event and comprises any part of a two-seater Indianapolis 500 style race car. The bill excludes tires and accessories from the sales tax exemption. This provision would decrease sale tax revenue by an indeterminable amount.

Sales Tax Exemption for Sales of Wrapping Material: This bill provides a sales tax exemption for sales of wrapping material and empty containers that are acquired for shipping or delivering tangible personal property that is owned by another person, is processed or serviced for the owner, and will be sold by that owner either in the same form or as a part of other tangible personal property produced by that owner in the owner's business of manufacturing, assembling, constructing, refining, or processing. This provision would decrease sale tax revenue by an indeterminable amount.

Sales Tax Refund Claim: This bill provides that a sales tax refund claim based on the exemption for electrical energy, natural or artificial gas, water, steam, and steam heat may not cover transactions that occur more than 36 months (rather than 18 months, under current law) before the date of the refund claim. [Note: P.L. 172-2011 changed the refund time period from 36 months to 18 months.] This provision should have no impact.

Sales Tax revenue is deposited in the state General Fund (99.848%), the Commuter Rail Service Fund (0.123%), and the Industrial Rail Service Fund (0.029%).

Tax Credit Extensions: The bill makes the following sunset date extensions. The potential additional credits that could potentially be claimed and the potential fiscal impact from these credit extensions is indeterminable.

(1) The bill extends the sunset date on the venture capital investment credit by two years, from December 31, 2014, to December 31, 2016. This would allow two additional years for the IEDC to award credits under this provision. Current statute limits the credits awarded by IEDC to $12.5 M per year. From 2007 to 2009, annual credits claimed by individual and corporate taxpayers averaged about $3.2 M, with the 2009 total coming in below the average at about $2.5 M. The credit is equal to 20% of annual qualified venture capital investment up to $1 M.

(2) The bill extends the sunset date on the Hoosier business investment (HBI) tax credit by three years, from December 31, 2013, to December 31, 2016. This would allow three additional years for the IEDC to award credits under this provision. From 2007 to 2009, annual credits claimed by individual and corporate taxpayers averaged about $6.7 M, with the 2009 total coming in below the average at about $5.6 M. The credit is equal to 10% of the qualified investment made by the taxpayer.

(3) The bill extends the sunset date on the <u>alternative fuel vehicle manufacturing investment credit</u> by 4 years, from December 31, 2012, to December 31, 2016. This would allow 4 additional years for the IEDC to award credits under this provision. The potential additional revenue loss due to the extension of this credit is indeterminable. In tax year 2009, only 7 individual taxpayers claimed the alternative fuel vehicle manufacturing investment credit, and no corporate taxpayers claimed the credit. The credits claimed in 2009 totaled $6,285. The credit is equal to 15% of qualified investment made before 2012 to manufacture and assemble alternative

fuel vehicles.

(4) The bill extends the sunset date on the new employer credit by 4 years, from December 31, 2012, to December 31, 2016. This would allow 4 additional years for the IEDC to award credits under this provision. The potential additional revenue loss due to the extension of this credit is indeterminable. The IEDC indicates that while they do receive inquiries about the credit, they have not received any applications for the credit. The credit is equal to 10% of wages paid by a new Indiana business to new qualified employees during the first 24 months of employment, and applies to new businesses starting in 2010, 2011, or 2012, that employ at least 10 new qualified employees.

Explanation of Local Expenditures: (Revised) *Abatement Notice*: Under current law, a county or municipality may require property owners to cut and remove weeds and other rank vegetation. Violation notices must be sent by certified mail. This provision would permit the county or municipality to post a notice of continuous abatement at the property after the initial violation notice is sent by certified mail. This provision would reduce the cost of posting violation notices for properties that are in continuous violation.

Explanation of Local Revenues: (Revised) *Low-Income Housing Assessments*: Currently, the assessed value of low-income rental housing that is eligible for Section 42 credits equals the greater of (1) the amount determined under the income capitalization method or (2) the value that would result in taxes equal to 5% of the annual total gross rents for the property. Current law also prohibits consideration of Section 42 federal income tax credits in determining the AV of low-income rental housing. Under this proposal, the value of income tax credits awarded after December 31, 2012 must be considered when determining AV.

This provision would result in an increase in the assessments of future low-income housing developments. The increase in AV could be captured to fund grants for the Residential Historic Rehabilitation Grant Program, also in this bill.

Residential Historic Rehabilitation Grant Program: This bill would create the Residential Historic Rehabilitation Grant Program. Counties, cities, and towns could adopt an ordinance establishing the program. A county program would pertain to the unincorporated portion of the county.

An adopting unit would also establish a residential historic rehabilitation grant fund. Grants from the fund would be available only for the qualified expenditures of a taxpayer that qualifies for a residential historic rehabilitation income tax credit. The adopting unit's fiscal body would have to appropriate money in the fund to be used as grants. Fund income would include taxes paid by the owners of low-income housing on the increase in their AV that is due to the inclusion of Section 42 federal income tax credits in determining the value.

Outdoor Signs: Prior to the 2011 Pay 2012 assessment year, outdoor advertising signs were assessed under a DLGF rule that set the value of each sign based on the type, size, and number of faces on the sign. The DLGF repealed that rule effective with the March 1, 2011, assessment date.

Outdoor advertising signs are now valued in the same manner as most other depreciable personal property by listing the cost of the signs in the depreciation schedule in the personal property tax return. The cost to purchase an existing outdoor sign can vary greatly depending on location. In many cases the value under the current method is higher than under the previous rule.

This bill would establish a valuation schedule that would be used for taxes payable from CY 2012 through CY 2015. The new schedule would set the unit value per structure based on the type and size, but not the number of faces, of each sign. This value would be used in lieu of the value arrived at by using the depreciation schedule in the personal property tax return.

For purposes of this analysis, it was assumed that there is an average of 1.5 faces on outdoor advertising signs in Indiana. In comparing the estimated assessed value for signs under this proposal with the estimated value under the previous rule, the values for single-pole signs would be about 136% higher, on average, with a range of 85% to 268%.

For taxes payable in 2011 (under the previous rule), $7.7 M in assessed value was reported statewide by taxpayers who self-reported their principal business activity as display advertising. The tax due is estimated at $195,000. For taxes payable in 2012 (without a rule or schedule), $22.2 M in assessed value was reported and the estimated tax due is $602,000. So, with no special rule in place, the tax due is estimated to be 209% higher than it was under the old rule.

The total AV and taxes attributable to outdoor advertising signs are not known. The property tax returns for the taxpayers identified above may also contain property other than outdoor advertising signs, so the above estimates for these taxpayers may be high. However, the full universe of outdoor advertising signs is not known. If a sign owner listed any other activity as their principal business activity, then the value of their signs would not be included in the estimates above. It is very likely that there are many outdoor advertising signs that are reported on property tax returns other than those identified here.

The valuation schedule contained in this bill would most likely result in a total sign valuation that is about 25% lower than the AV under current law (without a rule or schedule), but 135% greater than the AV under the pre-2012 schedule. The change in valuation by taxpayer and location would vary. Compared with current law, lower overall assessments would cause property tax rates to rise and could result in an increase of circuit breaker losses for local civil taxing units and school corporations.

(Revised) *Township Assistance Levy*: Under current law, townships have 2 separate maximum levies, one for firefighting and the other for all other controlled levies. This bill would create a third township maximum levy, for township assistance (TA), beginning with 2013 taxes. The general maximum levy limit would be reduced by the amount of the TA maximum levy.

A township's 2013 TA maximum levy would be equal to the levy generated by a tax rate computed as follows: The lesser of (1) the 2012 TA tax rate or 4.5 times the state average 2012 TA tax rate multiplied by the complexity index for the school corporation in the township with the greatest ADM count. If the initial tax rate is less than the 2012 TA tax rate, then the reduction would be phased in from 2013 to 2015. One-third of the reduction would be applied in 2014, and two-thirds would be applied in 2014. The new maximum levy would be fully in place by 2015. The normal maximum levy growth at the assessed value growth quotient (AVGQ) would apply immediately for any township for which the tax rate is not reduced under this proposal. The AVGQ growth would apply to the affected township after the levy reduction is phased in.

The bill would permit a township to increase its TA tax rate in a particular year by reducing the township's general tax rate for that year. However, a township would not have the ability to increase its general tax rate by reducing its TA rate.

The total township general maximum levy for 2011 was $60.4 M with the total TA levy equal to $45.6 M. There were 146 townships with no TA levy. Townships without a 2012 TA levy would have no 2013 TA maximum levy.

Based on 2011 levies and tax rates and estimated assessed value and levies for future years under current law, this bill would result in a lower TA maximum levy for Calumet Township in Lake County. This provision would not affect any other township. Calumet Township's TA levy was $11.8 M in 2011. The levy would be reduced by about $2.7 M in 2013, $5.5 M in 2014, and $8.3 M in 2015. Circuit breaker losses for the civil taxing units and school corporations that intersect with Calumet Township would be reduced by almost that same amount. Both net tax bills and TIF proceeds would be reduced by $1.2 M.

Clark County Maximum Levy: Under the law in effect for 2008 through 2011 maximum levies, a taxing unit's maximum levy was equal to the unit's actual levy for the previous year multiplied by the income-based assessed value growth quotient (AVGQ), plus one-half of the unused levy authority from the previous year. Beginning with 2012 levies under current law, the maximum levy is equal to the previous year's maximum levy multiplied by the AVGQ.

Under this provision, the Clark County taxing unit's maximum levy for 2013 would be computed by applying the AVGQ for 2008 through 2013 to the 2007 maximum levy. Clark County's 2012 maximum levy is $6,719,024. At an assumed 3.2% AVGQ, the 2013 maximum levy is estimated at $6,934,033 under current law. Under this provision, the 2013 maximum levy is estimated at $7,513,969, for an increase of $579,936. The increase is estimated at $596,174 in 2014 and $612,271 in 2015.

Assuming that the county would increase its property tax levy by these amounts, circuit breaker losses would grow for civil taxing units and school corporations by an estimated $173,000 in 2013, $180,000 in 2014, and $185,000 in 2015. Net property tax bills would be increased by just over $500,000 per year. In addition, TIF proceeds would increase by about $100,000 per year.

(Revised) *Solar Power Device*: Under this bill, the owner or lessee of real property or the owner of a mobile or manufactured home equipped with a solar-powered device designed to generate electricity is entitled to receive an annual property tax deduction. The deduction would be equal to the difference between the assessed value with the system and the assessed value without the system.

The deduction also extends to the owner of a solar powered device that is assessed either as distributable property under current law, or personal property. In this case, the amount to be deducted annually is the assessed value of the device.

In general, a solar powered device that is owned or operated by an entity (e.g. a utility company) that sells electricity wholesale or retail is not eligible for the deduction. However, a person who sells solar generated electricity to a utility through a net metering or feed-in-tariff program is eligible. Additionally, the owner of a solar powered generator (including one directly serving a public utility's business operations site), located on a site where a person consumes an annual amount of electricity equal to what the generator produces, is also entitled to the deduction. This applies even if the electricity generated on the site is sold to a public utility.

To be eligible for the property tax deduction, the device must be installed after 2011. Eligible taxpayers may claim the deduction beginning in tax payment year 2013.

This proposal could result in an increase in the number of solar-powered electric generating devices installed. The potential increase in assessed valuation is indeterminable at this time. Normally, an increase in assessed valuation would lead to lower tax rates and possibly lower circuit breaker credit losses for local civil taxing units and schools. Assuming that the investment in acquiring a solar-powered electric generating system would be made with or without the availability of the deduction, the deduction would cause taxing units to forgo the increase in assessed value to their tax base, and the possible reduction in tax rates and circuit breaker credits.

Total local revenues would be unchanged. Cumulative funds would not benefit from the assessed value of the new solar-powered electric generating systems.

Background Information: Current law extends an annual property tax deduction to the owners of real property or mobile homes equipped with a solar-energy heating or cooling system. Owners of real property or mobile homes equipped with a wind-power device to generate electricity are also entitled to an annual property tax deduction.

Currently available data combine the deduction for solar-energy heating or cooling systems and wind-power devices. In 2011, approximately 2,875 solar-energy and wind-power devices received a total deduction of a little over $45 M in assessed valuation.

State Agencies Affected: Commission on State Tax and Financing Policy.

Local Agencies Affected: County auditors; Counties; Cities; Towns; Townships; Other civil taxing units and school corporations; Clark County.

Information Sources: LSA property tax databases; Local Government Database, DLGF, LSA income tax databases, 2007-2009.

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